

## REMARKS

The Office Action of November 27, 2006 has been carefully reviewed and these remarks are responsive thereto. Claim 1 has been amended. Claims 5-17 and 22-26 have been withdrawn. Reconsideration of the application in view of the foregoing amendments and following remarks is respectfully requested. Each of the Examiner's rejections is discussed below.

### Section 102

#### Robertson

Claims 1, 2, and 4 have been rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 4,134,155 to Robertson ("Robertson"). This rejection is respectfully traversed.

Robertson discloses a protective helmet for use in preventing injuries to rescue personnel during search and rescue operations. The helmet has rigid impact protective plates 14, which are covered with a high temperature fire resistant covering layer 16.

Robertson does not disclose or make obvious a swim cap having a first portion configured to cover at least a portion of a crown of a user's head and having a first durometer, and a second portion formed of a **flexible and stretchy** material configured to conform tightly to and **provide tension to keep the cap tight on** a user's head, secured to the first portion, and having a second durometer, with the second durometer being smaller than the first durometer, as required by independent claim 1.

Covering layer 16 of Robertson, cited in the Office Action as being a second portion having a second durometer smaller than the first durometer, is not formed of a flexible and stretchy material configured to conform tightly to and provide tension to keep the cap tight on a

user's head. As noted above, this covering layer is formed of a fire resistant material that is applied to the exterior of protective plates 14. This layer of fire resistant material is not flexible and stretchy, nor is it configured to conform tightly and provide tension to keep the cap tight on to a user's head. Accordingly, the rejection is improper and should be withdrawn.

### Lee

Claims 1, 2 and 4 have been rejected under 35 U.S.C. § 102(b) over U.S. Patent Publication No. 2002/0133866 to Lee ("Lee"). This rejection is respectfully traversed.

Lee discloses a baseball cap having a crown 18. A packaging insert 10 has a rigid crown portion 12 that fits within the front portion of crown 18 in order to help retain the shape of the front portion of crown 18 during shipping.

Lee does not disclose or make obvious a swim cap having a first portion configured to cover at least a portion of a crown of a user's head and having a first durometer, and a second portion formed of a **flexible and stretchy** material configured to conform tightly to and **provide tension to keep the cap tight on** a user's head, secured to the first portion, and having a second durometer, with the second durometer being smaller than the first durometer, as required by independent claim 1.

Crown 18 of Lee, cited in the Office Action as being a second portion having a second durometer smaller than the first durometer, is not formed of a flexible material configured to conform tightly to a user's head. The material of crown 18 is not expressly disclosed in Lee, but one skilled in the art would understand that baseball caps are not formed of flexible and stretchy materials configured to conform tightly to and provide tension to keep a cap tight on a user's head.

Lee expressly teaches away from a flexible and stretchy material. The purpose of the packaging insert of Lee is to retain “the shape of the front portion of the baseball type cap crown” (col. 2, paragraph [27], lines 9-10). If crown 18 were made of a flexible and stretchy material, there would be no need for the packaging insert. Therefore, to have crown 18 formed of a flexible and stretchy material configured to conform tightly to and provide tension to keep a cap tight on a user’s head would go against the teachings of Lee. Accordingly, the rejection is improper and should be withdrawn.

### Section 103

#### Claim 3

Claim 3 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Robertson in view of U.S. Patent No. 2,664,569 to Andrews (“Andrews”). Andrews is cited as disclosing a cap designed to be worn while swimming, with the outer peripheral portion 11 having a thickness greater than that of its inner portion in order to prevent water seepage into the cap. This rejection is respectfully traversed.

Andrews fails to overcome the deficiencies of Robertson noted above. Specifically, Andrews does not disclose or make obvious a swim cap having a first portion configured to cover at least a portion of a crown of a user’s head and having a first durometer, and a second portion formed of a **flexible and stretchy** material configured to conform tightly to and **provide tension to keep the cap tight on** a user’s head, secured to the first portion, and having a second durometer, with the second durometer being smaller than the first durometer, as required by independent claim 1, from which claim 3 depends.

Accordingly, the rejection is improper and should be withdrawn.

### **Claim 18**

Claim 18 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Lee in view of U.S. Patent Publication No. 2002/0184688 to Ewing (“Ewing”). Ewing is cited as disclosing a cap which could be used for swimming comprising a first portion 12 or 22 formed from PET, configured to cover at least a portion of a crown of a user’s head and having a first durometer, and a second portion 18 secured to and overlaying the first portion, and having a smaller durometer than the first durometer. The second portion entirely covers the first portion and extends beyond a peripheral edge of the first portion. This rejection is respectfully traversed.

Ewing fails to overcome the deficiencies of Lee noted above. Specifically, Ewing does not disclose or make obvious a swim cap having a first portion configured to cover at least a portion of a crown of a user’s head and having a first durometer, and a second portion formed of **a flexible and stretchy material configured to conform tightly to and provide tension to keep the cap tight on** a user’s head, secured to the first portion, and having a second durometer, with the second durometer being smaller than the first durometer, as required by independent claim 1, from which claim 18 depends.

Accordingly, the rejection is improper and should be withdrawn.

### **Claims 19 and 20**

Claims 19 and 20 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Robertson in view of U.S. Patent No. 5,537,667 to Kenning et al (“Kenning”). Kenning is cited as disclosing a silicone swimming cap. This rejection is respectfully traversed.

Kenning fails to overcome the deficiencies of Robertson noted above. Specifically,

Kenning does not disclose or make obvious a swim cap having a first portion configured to cover at least a portion of a crown of a user's head and having a first durometer, and a second portion formed of a **flexible and stretchy** material configured to conform tightly to and **provide tension to keep the cap tight** on a user's head, secured to the first portion, and having a second durometer, with the second durometer being smaller than the first durometer, as required by independent claim 1, from which claims 19 and 20 depend.

Accordingly, the rejection is improper and should be withdrawn.

#### **Claim 21**

Claim 21 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Robertson in view of U.S. Patent No. 3,979,777 to Gregg ("Gregg"). Gregg is cited as disclosing a swimming cap with a second portion formed from latex rubber to more closely conform to the contours of a wearer's head. This rejection is respectfully traversed.

Gregg fails to overcome the deficiencies of Robertson noted above. Specifically, Gregg does not disclose or make obvious a swim cap having a first portion configured to cover at least a portion of a crown of a user's head and having a first durometer, and a second portion formed of a **flexible and stretchy** material configured to conform tightly to and **provide tension to keep the cap tight** on a user's head, secured to the first portion, and having a second durometer, with the second durometer being smaller than the first durometer, as required by independent claim 1, from which claim 21 depends.

Accordingly, the rejection is improper and should be withdrawn.

#### **Conclusion**

Pending claims 1-4 and 14-21 are believed to be in form for allowance, and an indication

to that effect is respectfully requested at this time. Examination of withdrawn claims 5-17 and 22-26 is respectfully requested at this time. Please apply any charges or credits to Deposit Account No. 19-0733.

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